

Basis For The Amendments

The applicant filed Application Serial No.: 09/280,279 on March 29, 1999. As a result of the prior patent attorney's malpractice, this application was unintentionally and unavoidably abandoned. See Petition for Revival of an Application for Patent Abandonment unavoidable under 37CFR 1.137(a) enclosed herewith. The applicant is now filing a Continued Prosecution Application with new Claims 29-39. The specification has been completely revised because the original specification was poorly drafted. This new application also includes a new title to more accurately disclose the invention.

Response To Office Action

The applicant has filed this new application as his response to the prior Office Action in the prior application. Specifically, the specification, as filed, has been amended to include information from publically available sources, specifically, the Physicians Desk Reference ("PDR") with respect to each of the drugs identified in the specification. Copies of the PDR pages in question are attached to an IDS which is filed contemporaneously with this Preliminary Amendment.

New Claims have been drafted consistent with the new specification. The amounts of the drugs, as claimed, are specified as being a safe and effective amount. Because the precise amount of a particular drug varies depending upon the physiology and symptoms of the patient, it is believed that the determination of the safe and effect amount is readily within the means of a person of ordinary skill in the art.

The Examiner admitted in the Office Action that "the state of the art does not provide any teachings about the effect of antihistamines, specifically, H₂ antagonists, in respect to prevention of undesired weight gain by antipsychotics or mood stabilizing drugs." For this reason, the new claims of this Application should be considered patentable. Moreover, neither of the references cited teach the benefits of the claimed invention for weight control. For example, Rosenberg U.S. Patent No. 5897910 merely discloses a combination of materials without suggesting the actual combination claimed herein, nor suggesting the benefit which is disclosed in the Application. Specifically, Rosenberg discusses hundreds of various materials including such diverse materials as saccharin and ginkgo. Given the extreme proximity of the compounds disclosed, it is submitted that the composition in question is not disclosed, particularly given the fact that Rosenberg does not recognize the benefit of the claimed composition.

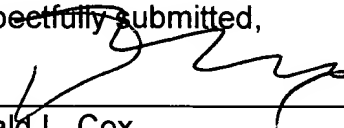
Deutsch, (CNS Drugs 1997: 8(4); 276-284), discloses the combination of a histamine H₂ antagonist as an adjunct to **conventional** antipsychotic drugs. The Application, on the other hand, involves the use of **unconventional** antipsychotic drugs as disclosed on pages 8-12 of the specification. Moreover, Deutsch does not disclose the treatment as an adjunct to mood altering drugs, the claim species, and in addition, does not disclose in any fashion the clinical benefit of the instant invention. In addition, Deutsch does not disclose the claimed compositional invention involving a combination of drugs administered simultaneously. Therefore, since the improved result is not disclosed, suggested, or recognized, and since none of the patents particularly discloses the method

and compositions claimed herein, it is submitted that the claimed invention would not be obvious.

Conclusion

The applicant requests that the new claims in the Application be reviewed by the United States Patent and Trademark Office and be allowed.

Respectfully submitted,



Donald L. Cox
Reg. No. 25,390
LYNCH, COX, GILMAN & MAHAN, P.S.C.
Aegon Center, Suite 2200
400 West Market Street
Louisville, Kentucky 40202
(502) 589-4215